



Commonwealth
of Massachusetts

OCPF Online
www.mass.gov/ocpf
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

May 7, 2004
AO-04-08

Mary Connaughton
1 Tomkins Lane
Framingham, MA 01702

Re: Political Fundraising by a Public Employee

Dear Ms. Connaughton:

This letter is in response to your recent request for guidance as to when you will no longer be subject to the political fundraising restrictions for public employees set forth in M.G.L. c. 55, § 13.

You have been teaching for the Economic and Business Administration Department at Framingham State College since the Spring 2003 semester when you were hired as a temporary full-time lecturer. During the Fall 2003 semester your status was "visiting lecturer" because you did not teach enough courses to be considered full-time. According to your present contract, which ends on May 31, 2004, you are, once again, a temporary full-time lecturer. The contract states, "As a full time faculty member, your conditions of employment will be those specified in the collective bargaining agreement between the Board of Higher Education and the Massachusetts State College Association." Although this contract ends at the end of May, you will continue to be paid pursuant to the contract over the course of several weeks.

You are also currently teaching an evening course for the school's Division of Continuing and Graduate Education (DCGE) program, and will teach a similar course from June 2 to July 2, 2004. You will be paid approximately \$3,700 for the June course.

For each of these positions with Framingham State College, you have been and will be paid directly by the Commonwealth. You received retirement benefits for the classes you have taught on a full-time basis in the business department, but not as the result of your teaching the evening DCGE courses.

In addition to the foregoing, you have recently been appointed to serve without compensation on the Commission of Judicial Conduct, and on the Board of Commonwealth Corporation, which you have indicated is a quasi public corporation funded by public and private sources.

QUESTION

Will the restrictions of M.G.L. c. 55, § 13 apply to you after your current contract with Framingham State College expires on May 31?

ANSWER

Yes. As long as you continue to be “employed for compensation” by the college, even on a part-time basis, you may not solicit or receive political contributions.

The campaign finance law prohibits persons, other than elected officials, who are “employed for compensation ... by the commonwealth” from directly or indirectly soliciting or receiving any contribution or other thing of value for any political purpose whatsoever. See M.G.L. c. 55, § 13. The office has consistently interpreted the term “employed for compensation” to include part-time public employees. See OCPF’s Interpretive Bulletin IB-92-01, in which the office stated that “‘persons employed for compensation’ include both full-time and part-time employees who receive any amount of compensation. The prohibition applies to such persons at all times, during working and non-working hours.

On the other hand, Section 13 does not apply to “independent contractors.” See AO-02-28. An independent contractor is a person who "contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking."

The office considers a number of factors in determining whether a person is an independent contractor. Compare AO-95-26 (sole proprietor computer consultant who has a contract with a state agency as one of many clients, has no office at the agency, sets his own hours, is not supervised or controlled by the agency, and provides guidance or advice on an as-needed basis, is an "independent contractor" not subject to section 13); AO-93-24 (volunteer fire fighter is not an independent contractor even though he sets his own hours because he is subject to supervision and control); and AO-98-05 (an instructor in a local adult education program was an independent contractor where the town did not supervise the teachers, require a contract, or provide work-related benefits, and the classes were scheduled when there was interest by the instructor and the students at a mutually convenient time).

In this instance, after the expiration of your full-time contract, you will continue to teach an evening course at Framingham State College and the Commonwealth will continue to pay you directly for your services. Even though you will no longer be receiving retirement benefits, you will still be teaching a credited undergraduate course at the college in a formal setting and pursuant to a contract, i.e. under the supervision and control of the college faculty. These facts, particularly given your employment history with the college, suggest that you will continue to be “employed for compensation” by Framingham State, albeit on a part-time basis, instead of providing services as an independent contractor.

As a result, you *may not* solicit or receive political contributions until you are no longer working in a paid position for the state college and you are not otherwise “employed for

compensation” by another government entity. Section 13 will cease to apply to you at such a time as you are no longer providing services to a government entity for wages, even if, as you described, you continue to receive residual compensation pursuant a contract for services that have been previously rendered. You should note that you are not subject to Section 13 as the result of your positions with the Commission of Judicial Conduct or the Board of Commonwealth Corporation because these are unpaid positions.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter and to OCPF’s staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:bp